

September 3, 2002

PUBLIC UTILITIES COMMISSION
Amendments to Eligible Resource
Portfolio Requirement Rule
(Chapter 311)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to consider amendments to the Eligible Resource Portfolio Requirement rule (Chapter 311) that would adopt the use of electricity attribute certificates to satisfy the portfolio requirement. We also include an amendment that clarifies the status of landfill gas as a renewable resource.

II. BACKGROUND

Chapter 311 was among a series of rules that the Commission promulgated prior to March 1, 2000 to implement Maine's Electric Restructuring Act. The rule implements the legislative requirement that all licensed competitive electricity providers (CEPs) satisfy at least 30% of their retail load in Maine through "eligible resources," as defined by statute. 35-A M.R.S.A. § 3210. In developing the rule, the Commission considered whether CEPs should be allowed to demonstrate compliance with the portfolio requirement through the possession of "certificates" or "tradable credits" that represent the attributes of electricity separate from the energy commodity. The Commission decided not to allow for tradable credits due, in part, to the lack of a region-wide system for administration and verification. *Order Provisionally Adopting Rule*, Docket No. 98-619 at 17-18 (Dec. 2, 1998).

Subsequent to the adoption of Chapter 311, NEPOOL began working to develop a tradable attribute certificate system. Such a system, known as the Generation Information System or GIS, has recently been implemented. The system has been specifically designed to support various public policy initiatives of the New England states, including Maine's eligible resource portfolio requirement.

As a result of the development of the GIS, we initiated an Inquiry on June 4, 2002 (Docket No. 2000-300) to examine whether the use of tradable certificates pursuant to the GIS should be incorporated into our portfolio requirement rule.¹ We also indicated

¹ The Inquiry also examined whether to incorporate the use of GIS certificates in our uniform information disclosure rule (Chapter 306). We will initiate a rulemaking to

that the Inquiry would consider other modifications that would improve the operation of the rule. Central Maine Power Company, Bangor Hydro-Electric Company, Public Advocate, Independent Energy Producers of Maine, Constellation Power Source, Inc., Union of Concerned Scientists, Strategic Energy LLC, Jon Reisman, and Maine Public Service Company provided comments during the Inquiry. Most of the commenters in the Inquiry supported the use of GIS certificates for purposes of demonstrating compliance with the portfolio requirement and no commenter opposed the use of the system. As discussed below, we propose to amend Chapter 311 to require the use of GIS certificates for purposes of verifying compliance and to make the rule consistent in other respects with the GIS system. We also propose to clarify that landfill gas is a renewable resource for purposes of the rule in that it may reasonably be considered a biomass resource.²

III. DISCUSSION OF PROPOSED AMENDMENTS

A. Generation Information System 1. Verification

We propose to amend several provisions of Chapter 311 to incorporate the GIS for verifying compliance with the portfolio requirement. The proposed rule adopts the use of GIS certificates as the sole means of verification for service to customers in the ISO-NE control area, but allows the Commission to accept alternative means of verification upon good cause for service during calendar year 2002. The proposed rule maintains the existing verification requirements for service to customers in northern Maine.³ Specifically, we propose to modify the language of sections 3(A), 4(A), 5(B)-(F) and 6(A) to require that CEPs demonstrate compliance with

consider changes to Chapter 306 in light of the GIS, as well as other modifications to the rule, in the near future.

² The Union of Concerned Scientists (UCS) commented that Maine's eligible resource portfolio requirement is not effective due to a poor design. According to the UCS, eligible supply in the region exceeds demand by such a margin that the Maine requirement provides no demand support, while forcing entities to incur transaction costs. The basic structure of Maine's portfolio requirement is a legislative requirement, not a function of Commission rule. Thus, this rulemaking does not consider any changes to the basic structure of Maine's portfolio requirement.

³ Although the proposed rule contains this dichotomy, the 30% portfolio requirement would remain a statewide obligation as contemplated in 35-A M.R.S.A. § 3210. Therefore, CEPs must have GIS certificates for service in the ISO-NE area or entitlements to eligible resources for service in northern Maine that in combination amount to 30% of total sales within the State. There is no obligation for CEPs to separately satisfy the 30% portfolio requirement within the two Maine regions.

the rule through GIS certificates for service in the NEPOOL area and to otherwise make the rule consistent with the GIS. We have also included definitions of “GIS,” “GIS certificates” and “eligible GIS certificates” in section 2 of the proposed rule.

We agree with the majority of commenters in the Inquiry that a regional tradable certificate system can only work as designed if it is the sole means of verification. One of the primary purposes of the GIS is to prevent the double counting of attributes. This purpose would be defeated if other means of verification were allowed. For example, an eligible generator could sell the attributes of the resource to one retail supplier and the energy commodity to another supplier. If alternative means of verification were allowed, there would be a double count if both the certificates and the purchase of the energy were used to verify compliance.

We have, however, allowed for alternative means of verification for service during 2002 upon a showing of good cause (Section 5(B)(1)). To correspond with the start of GIS certificate trading,⁴ the proposed rule adopts the use of the GIS beginning with service in January 2002. Due to the timing of this rulemaking, some suppliers may have reasonably relied on other means to verify compliance consistent with the provisions in the current rule. Thus, the proposed rule allows for a one-year transition period in which CEPs may demonstrate that good cause exists for an alternative means of verification. After this transition period, the proposed rule requires verification be demonstrated only through GIS certificates.

The proposed rule also contains a provision (Section 5(I)) that would allow the Commission to reject certain GIS certificates if it finds that the source of the certificates is not an eligible generation facility or for other good cause. Under the GIS, generators essentially self-certify that their facilities satisfy a particular state’s portfolio requirement. As a result, it is possible that the Commission, upon investigation, may conclude that the source of certain certificates is not an eligible facility under Maine law and, thus, reject the use of the certificates for purposes of Maine’s rule.⁵ We propose to also add an explicit provision (Section 5(J)) that the Commission may initiate investigations and

⁴ Although the GIS was recently implemented, the system’s first certificate trading period was for service during the first quarter of 2002.

⁵ There may be other reasons that would lead the Commission to reject certain certificates. For example, we have recently initiated an investigation in which we are considering the issuance of a declaratory ruling that GIS certificates associated with on-going qualifying facility contracts should be transferred to the utility. *Investigation of GIS Certificates Associated with Qualify Facility Agreements*, Docket No. 2002- 506. In the event certificates are not transferred according to a Commission order, we may decide not to accept such certificates for any purpose under our rules.

obtain information from the generation facilities to verify the accuracy of certification of facilities as “eligible” under Maine’s rules.⁶

Finally, we have not changed the rule’s verification requirements with respect to service in northern Maine. The GIS is only applicable to service in the ISO-NE control area and there is currently no attribute system in northern Maine. We agree with commenters that, due to the small size of the market, a GIS-type system in northern Maine is likely to be cost-prohibitive. Thus, the rule contains two verification approaches depending on whether service is provided in the ISO-NE control area or the northern Maine market.

2. Multi-Fuel and Pumped Storage

We propose to modify the provisions of Chapter 311 concerning multi-fuel and pumped storage hydro facilities (sections 4(C) and 4(D)) to specify that such facilities will be treated according to the GIS rules for service in the ISO-NE control area. The provisions remain the same for service in northern Maine. Commenters in the Inquiry stated that the GIS has rules for the treatment of multi-fuel and pumped storage hydro facilities and, as a result, there is no need for the specific provisions in Chapter 311.

The GIS rule assigns certificates to multi-fuel facilities based on the proportion of output per fuel type, while Chapter 311 provides that energy may be classified as renewable when generated by a renewable fuel. Thus, the GIS rule appears essentially consistent with the Chapter 311 provision. The GIS provision on pumped storage is inconsistent with our rule in that the GIS assigns such facilities residual mix certificates,⁷ while Chapter 311 classifies facilities as renewable based on the fuel used for pumping. Because the provisions in Chapter 311 are negated by or inconsistent with the GIS rules, we propose to remove the specific provisions as they relate to service in the NEPOOL control area.

3. Physical Deliverability

The statutory provisions governing the portfolio requirement require that a facility generate power that “can physically be delivered” to the applicable control area in order to be classified as an eligible resource. 35-A M.R.S.A. § 3210(2)(B)(1). The current rule (Section 4(B)) implements this provision by requiring that energy used to satisfy the portfolio requirement be “physically delivered” in that it is recognized

⁶ The GIS rules specify that entities subject to “attribute laws” are responsible for demonstrating compliance with such laws and that the GIS administrator, NEPOOL and ISO-NE have no responsibility for ensuring compliance with such laws (GIS Operating Rules 5.3(C)).

⁷ Residual mix certificates are assigned to the excess of energy used for pumping over energy generated by the facility.

pursuant to the rules of the control area as serving load obligations within the region. The proposed rule modifies the provision to incorporate the GIS by specifying that the source of the GIS certificates must be energy that is physically delivered to the ISO-NE control area in that it is recognized as serving load obligations. We seek comment on whether there is anything in the modified language that is inconsistent with the GIS.

B. Landfill Gas

As part of the process of implementing Chapter 311, our Staff has had several inquiries as to whether energy generated from landfill gas can be considered renewable for purposes of satisfying Maine's portfolio requirement. Staff has provided an informal opinion that landfill gas can be considered biomass for purposes of the portfolio requirement. Commenters in the Inquiry agreed that landfill gas should qualify as renewable for Maine's portfolio requirement. We thus propose to modify section 4(A)(1) of the rule to specify that biomass includes landfill gas.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on October 3, 2002 at 1:30 p.m. at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until October 16, 2002. However, the Commission requests that comments be filed by September 27, 2002 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2002-494 and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the hearing accessible by calling 287-1396 or

TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

O R D E R

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

a. All electric utilities in the State;

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.